

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct.

- Group I: Claims 1-6, drawn to a forged part having a base phase structure containing 30% or more ferrite and a second phase structure comprising retained austenite, as well as bainite and/or martensite, classified in class 420, subclass 320.
- Group II: Claim 7, drawn to method of making forged part by heating and holding steel at (Ae1-30C) to Ae3 for 10 seconds or more, forging, cooling to 325 to 475C at a cooling rate of 3C/s or more, and holding in said temperature range for 60 to 3600 seconds, classified in class 148, subclass 649.
- Group III: Claims 8 to 13, drawn to a forged part having a base phase structure containing 50% or more tempered bainite or tempered martensite and a second phase structure comprising retained austenite and martensite, classified in class 148, subclass 320.
- Group IV: Claim 14, drawn to method for producing forged part by heating and holding at (Ae1-30C) to (Ae3-30C) for 10 seconds or more, forging, cooling to 325 to 475C at a cooling rate of 3C/s or more and holding in said temperature range for 60 to 3600 seconds, classified in class 148, subclass 649.

Applicants provisionally elect with traverse the invention of Group I, Claims 1-6.

The claims of Groups I-IV are integrally linked as products and method for making.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction

is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinctness.

The Examiner asserts that Groups I and II, III and IV do not relate to a single general inventive concept and that processes as claimed in Groups II and IV can be used to make other products besides those of Groups I and III respectively or that the product of Groups I and III can be made by processes other than those of Groups II and IV. The Examiner is simply making an assertion and has not demonstrated that to be the case. Products and process for the manufacture of said product should be examined together. The product claims of Groups I and III are very closely related, they both contain austenite, bainite and/or martensite with Group I additionally containing ferrite. The methods for making the products of Groups I and III are nearly identical, i.e. using the same reaction parameters.

The Examiner has failed to show that other methods can be used to make the claimed products but simply makes the allegation that “two separate heat treatment steps comprising a forging treatment and subsequent quenching and tempering carried out separately” without any evidence or proof to show that to be the case.

Different classification does not necessitate different inventions. Restriction is only proper if the claims of the restricted groups are not related.

The Office has not shown that a burden exists in searching all of the claims.

Further, M.P.E.P. § 803 states as follows:

If a search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

Further, Applicants reserve the right to file a divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

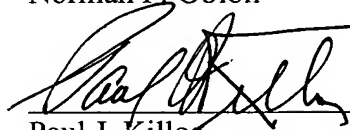
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